IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 24901 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJENDRA @ RAJU RATILAL TAMAKUWALA
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
MS BANNA S DUTTA for Petitioner,MR AR SHAIKH for Petitioner.
RULE SERVED BY DS for Respondent Nos. 1 - 2.
MR ND GOHIL, AGP for Respondent No. 3.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 12/06/2006

ORAL JUDGMENT

By filing this petition, the detenu, who is detained under provisions of Prevention of Anti Social Activities Act (“PASA” for short), has challenged his detention order dated 20-10-2005, by which he is detained as a “dangerous person” under PASA. Along with the order of

detention, the petitioner is also served with the grounds of detention. In the grounds of detention, there is a reference of three criminal cases pending against the petitioner. All these cases are registered against the petitioner under Sections 384, 170, 420 and 114 of the Indian Penal Code. In the last case, there is also a reference to Section 323 of the Indian Penal Code. It is alleged that the petitioner is extorting money and because of his activity, the public order is disturbed. The detaining authority also recorded the statements of two witnesses, whose names have not been disclosed. After arriving at subjective satisfaction, the detaining authority has passed the order of detention against the petitioner.

Ms.Banna Dutta, learned advocate for the petitioner submitted that so far as pending criminal cases are concerned, all these cases are under the provisions of the Indian Penal Code and they are individual cases. She further submitted that simply because the cases are registered against the petitioner, it cannot be said that the petitioner has violated public order and some more material is required to justify the stand taken by the detaining authority that the activity of the petitioner is prejudicial to public order. Learned advocate for the petitioner has relied upon the decision of the Division Bench of this Court in **A.J.Solanki V. Police Commissioner, Surat** reported in 2000 (1) GLH 393. In paragraph 22 of the said judgement, Division Bench of this Court has held as under :

> "So far as the cases against the detenu are concerned, they have already been registered. They were against persons mentioned therein which is stated in the grounds of detention by the detaining authority. Regarding two statements, having taken into account the law laid down by the Supreme Court in Ram Manohar Lohia vs. State of Bihar, AIR 1966 SC 740 and reiterated from time to time including the decisions referred to by us hereinabove, the

> case falls under the maintenance of "law and order" and not "public order". The subjective satisfaction arrived at by the detaining authority, therefore, cannot be said to be legal, valid and in accordance with law. Since in the facts and circumstances, an order of detention could have been passed by the detaining authority for maintenance of "public order", the order deserves to be quashed and is hereby set aside. The detenu is ordered to be set at liberty forthwith unless required in any other case. Appeal is accordingly allowed. No order as to costs."

In paragraph – 8 of the affidavit-in-reply filed by the Commissioner of Police, Surat City, it is stated that "the detenu is a bootlegger and his antisocial activities have the potential to disturb the public order and therefore it is necessary to detain him immediately with a view to prevent him from acting in any manner prejudicial to the maintenance of public order and therefore I have passed the order of detention against the detenu."

It is interesting to note that the petitioner is detained as a "dangerous person" and, therefore, it is difficult to understand the reference about his bootlegging activity in the affidavit-in-reply. The detention order is passed on the ground that the petitioner is "dangerous person", yet the detaining authority has stated in affidavit-in-reply that the petitioner is detained as a "bootlegger". Accordingly, the detaining authority himself has stated that in view of bootlegging activity of the petitioner, order of detention is passed against the petitioner.

It seems that there is no application of mind on the part of the detaining authority as in the affidavit-in-reply it is stated that the petitioner is detained because of his bootlegging activity as against that the order of detention is passed on the ground that the petitioner is a dangerous person.

So far as pending criminal cases are concerned, in my view, it can be said to be the breach of law and order and registering of said cases itself cannot be said to be an act, which violates public order. Additionally, the order of detention is also required to be quashed, as the detaining authority has stated in affidavit-in-reply that he has arrived at subjective satisfaction that the detenue is a bootlegger and his antisocial activities would disturb the public order, however, the petitioner is detained as a “dangerous person”. There is nothing on record to suggest that registering the criminal cases of extortion may disturb the even tempo or normal life of the community in the locality or disturb general peace and tranquility or create a sense of alarm and insecurity in the locality.

Considering the aforesaid aspect of the matter, this petition is required to be allowed and the order of the detention is required to be quashed, as it cannot be said that the petitioner has violated public order and at the most it can be said that the petitioner has violated law and order. Order of detention is also required to be quashed on the additional ground that the detaining authority has stated in the affidavit-in-reply that the petitioner was required to be detained as a “bootlegger”, though the order of detention was passed against the petitioner as a “dangerous person”. Therefore also, order of detention cannot be sustained as the detaining authority has clearly stated that he has arrived at the subjective satisfaction that the detenue is bootlegger, while the order of detention is passed on the basis that the petitioner is a dangerous person and, therefore, he is detained under PASA.

For the foregoing reasons, this petition is allowed. Order of detention passed against the petitioner dated 20-10-2005 is quashed and set aside. Petitioner – Rajendra @ Raju Ratilal Tamakuwala is ordered to

be released forthwith unless his presence is required in connection with any other case. Rule is made absolute with no order as to costs.

(P.B.MAJMUDAR, J.)

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